While I disagree with a majority of the FCC's decision, I would like to point out for small market broadcasters to survive, they may need the chance to utilize duopolies and other means to stay in business. And while I am concerned about the broad sweeping changes the FCC made, I remain cognizant of the fact that small market broadcasters may potentially need to utilize the very changes we may revoke today, and I will work with my colleagues to find market relief for these small broadcasters when warranted.

Over the next several months we will continue to argue the merits of this issue. However, I will only support any legislation that protects diversity, localism, and Montana's small businesses.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Berkeley, CA. On May 12, 2003, the victim, a 23-year-old male Sikh wearing a turban, was assaulted while on an evening walk at the University of California. The attacker, and his two male companions, started to walk past the victim, then yelled, ''Taliban, look out!'' The suspect punched the victim in the nose then pushed him to the ground. The suspect later pulled the victim back to his feet and the men left the scene on foot.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CMS' PROPOSED CHANGES TO THE 75 PERCENT RULE

Mr. NELSON of Nebraska. Mr. President, I would like to express my concern with a proposed rule by the Centers for Medicare and Medicaid Services, CMS, that would threaten the ability of rehabilitation hospitals to continue to provide critical care.

In my home State of Nebraska, Madonna Rehabilitation Hospital in Lincoln is a nationally recognized premier rehabilitation facility that offers specialized programs and services for those who have suffered brain injuries, strokes, spinal cord injuries, and other rehabilitating injuries. If this proposed rule goes into effect, Madonna would not be able to offer the same critical care to its patients as it currently does.

When CMS first looked at whether facilities would qualify as an IRF, a list of criteria was created to determine eligibility. They current criteria, generally referred to as the 75 percent rule, were established in 1984 and have not been updated since then. To qualify as an IRF under the 75 percent rule, 75 percent of a facility's patients must be receiving treatment for one of 10 specified conditions. Because the rule has not been updated in almost 20 years, newer rehabilitation specialties are not reflected and, therefore, are not counted in determining facility compliance with the 75 percent rule.

Since the 75 percent rule was implemented, IRFs have argued that the list of conditions should be expanded to reflect advances in modern rehabilitation medicine. The need for new rehabilitation specialties to treat cardiac, pulmonary, cancer, and other conditions was not even foreseeable when the 75 percent rule was implemented. Yet CMS has repeatedly refused to update the rule—even after implementing a payment system that specifically recognizes many more conditions than the 10 listed in the 75 percent rule.

On September 9, 2003, CMS published proposed modifications to the outdated 75 percent rule. I commend CMS for recognizing the need to update the regulation. Unfortunately, I believe that the proposed changes do not go far enough and may have serious consequences for Medicare beneficiaries and other patients who need inpatient rehabilitative care.

On its face, it appears that CMS expanded the rule by increasing the number of conditions from 10 to 12 and by lowering the percentage threshold from 75 percent to 65 percent. However, this ''expansion'' is illusory. The proposed rule will, by CMS's own estimate, reduce Medicare payments to IRFs by $223 million annually and shift hundreds of thousands of patients—both Medicare and non-Medicare—into alternative care settings that may be inappropriate.

It is worth noting that Congress gave CMS a directive to implement the rehabilitation prospective payment system in a budget-neutral manner. Yet this rule—without any congressional directive—seriously cuts rehabilitation hospital funding.

Although CMS expanded the number of conditions from 10 to 12, it did so by replacing one of the existing conditions—polyarthritis—with three new conditions that collectively are much more narrow than the original condition. CMS acknowledges that the industry historically has understood hip and knee replacement cases to fall within the definition of ''polyarthritis.'' Unfortunately, CMS now proposes to count joint replacement cases only if the patient has made no improvement after an ''aggressive and sustained course of outpatient therapy.''

This means that, instead of being directly transferred from an acute care hospital to an IRF, the patient will be forced into a skilled nursing facility, SNF, and/or outpatient therapy before being eligible for inpatient rehabilitation. IRFs would become a setting of last resort, and patients who might have returned to function after a brief IRF stay will be forced to endure weeks if not months, of therapy in other settings that may be inappropriate before being admitted to an IRF.

CMS also proposes to lower the threshold from 75 percent to 65 percent for a three-year period to give facilities time to come into compliance with the new criteria. Although this change is an improvement, it simply does not go far enough to prevent a significant negative impact on rehabilitation patients and providers.

RAND data indicate that only about 25 percent of IRFs, at most, could meet a 65-percent threshold under the current list of 10 conditions. Since the proposed rule actually narrows the agency's interpretation of arthritis-related conditions, the percentage of facilities that could comply with the revised list of conditions is probably lower. This means that, even under a 65 percent standard, at least 75 percent of facilities will be deemed out of compliance if CMS finalizes the proposed rule.

The proposed rule glosses over the negative impact that this dramatic shift will have on patients by assuming that all sites of care are equally effective and equally available. But I am very concerned about the impact that the proposed rule would have on patients living in rural areas, where alternative sites of rehabilitative care may be unavailable or highly inconvenient. Where SNF beds are scarce and few home health providers offer physical therapy services, these patients could be forced to travel long distances for daily outpatient care in a weakened state, risking reinjury and rehospitalization.

Because compliance with the proposed rule will hinge on an IRF's total patient population, not just its Medicare population, CMS estimates that the proposed rule ''may have an effect'' on approximately 200,000 non-Medicare patients. CMS was not able to quantify or describe this effect because of inadequate information. In my opinion, it would be irresponsible to implement this rule without further studying its likely impact on Medicare beneficiaries, non-Medicare patients, rehabilitation providers, and the Medicare Program.

The Medicare Payment Advisory Commission, MedPAC, agrees that the rule needs to be updated. In a July 7, 2003, letter to CMS Administration Tom Scully, MedPAC Chair Glenn Hackburth proposed that CMS lower the threshold to 50 percent for at least a year to enable an expert panel of clinicians to reach a consensus on the diagnoses to be included in the 75 percent rule.

I agree with MedPAC and worked with Senator JIM JEFFORDS to file an amendment to the Labor, Health and Human Services and Education Appropriations bill that would have implemented MedPAC's recommendations.

I decided against offering my amendment for a vote, but I leave open the possibility of offering the amendment on another vehicle if CMS does not take appropriate action. I hope that the 75 percent rule can be updated to ensure that my constituents and all Americans continue to have access to necessary medical rehabilitation services.

CONTRACTING OUT IN THE DEPARTMENT OF INTERIOR

Mr. AKAKA. Mr. President, I rise today in strong support of the amendment offered by the Senator from Nevada, Mr. REID, to prohibit the use of fiscal year 2004 Interior funds to initiate public private competitions at the Department of the Interior, including the National Park Service. This amendment takes an important step to ensure that vital public services at Interior are not put at risk by the administration's aggressive plans to contract out Federal jobs.

As the ranking member of the National Parks Subcommittee, I view the administration's outsourcing policies as especially harmful to the National Park Service. I am particularly concerned that the outsourcing of Park Service jobs could target biologists, anthropologists and archaeologists.

During a Parks Subcommittee hearing this summer, Scot McElveen, the president of the Association of National Park Rangers testified that current outsourcing policies seriously threaten reliable, effective, and efficient service to the public.

Mr. McElveen said the administration's outsourcing plan is incompatible with the Parks Service's decentralized workforce. Furthermore, he noted that it would only worsen National Parks' current staffing and budgetary shortfalls by diverting funds for operations and maintenance to contract out jobs.

I agree with Mr. McElveen. I fail to see how outsourcing functions within the Parks Service will improve their mission to protect our national parks, historic sites, monuments, and other treasured places. Park Service employees have a strong sense of public service which cannot be replicated by the private sector.

I believe this amendment takes the measures needed to ensure that contracting out at the Department of the Interior does not come at the expense of our National Parks.

The Reid amendment is identical to language included in H.R. 2691, the House Interior Appropriations bill. I urge my colleagues to support this amendment.

HONORING OUR ARMED FORCES

Mr. MCCAIN. Mr. President, I was recently informed of the passing of MSG Al Bland, USAF Ret. This distinguished veteran of the United States Air Force served his country admirably for 20 years. His military career included service during World War II, where Master Sergeant Bland was ordered to beach defense on the Bataan perimeter. Captured at Bataan in April of 1942, Master Sergeant Bland survived the Bataan Death March, carrying another soldier for most of the journey. As a POW, Bland was imprisoned at Camp O'Donnell in the Philippines, later on a Japanese Hell Ship and finally in Manchuria. He was finally released from prison camp in 1945, after three torturous years. As a result of his combat, he was 100 percent service related disabled.

The list of awards Master Sergeant Bland received for his valiant service include the Bronze Star and the Purple Heart. Upon completing his service, Master Sergeant Bland became a leader on POW related issues for many years. He was instrumental in establishing the Andersonville National Park and was awarded the POW Medal by President Reagan in 1988. I was fortunate enough to work with Master Sergeant Bland and more importantly call him a friend. Master Sergeant Bland was a true patriot and he will be sorely missed and by a grateful nation.

DO NOT CALL REGISTRY

Mr. KOHL. Mr. President, regrettably, a Federal judge in Oklahoma has voided the Federal Trade Commission's national ''do not call'' list that was set to go into effect on October 1. This action frustrates the wishes of more than 48 million Americans who have signed up for the ''do not call'' list. Though a judge ruled that the FTC lacked Congressional authority to create the national list, I strongly disagree and believe that Congress explicitly granted the Commission both the authority and the funding earlier this year to create a ''do not call'' list.

Indeed, absent Congressional action, the FTC's ''do not call'' list would have failed to have become a reality this year. I recall discussing the matter with FTC Chairman Tim Muris at a hearing before the Antitrust Subcommittee last September. He asked me for help in getting Congressional authority in order to raise fees necessary to implement the ''do not call'' list. We were able to grant the Commission this authority in the Consolidated Appropriations Resolution which passed in February of this year. We further authorized the FTC's initiative in the Do-Not-Call Implementation Act on March 11, 2003.

These actions more than authorized the FTC's ''do not call'' list, in my view. That said, this bill will make it crystal clear that Congress endorses, supports, and authorizes the FTC to create a national ''do not call'' registry.

I commend the FTC's hard work to create a national ''do not call'' list. Such action was long overdue. The deluge of telemarketing sales calls is the number one consumer complaint in this country. It is a problem that has gotten out of control. The average American receives two to three telemarketing calls per day. I often receive even more than that. Some estimate that the telemarketing industry is able to make 560 calls per second or roughly 24 million calls per day. No wonder people feel like they are under siege in their own home. Therefore, we in Congress acted to ensure that the FTC's ''do not call'' list became a reality. Should we need to do more to overcome a court's objections, we can and shall do it.

Given the enormous response of nearly 50 million Americans who have signed up in less than 3 months, the ''do not call'' list is clearly needed. Though I am troubled by the court's decision, we can set the record straight and authorize the FTC's action. I urge quick passage of this legislation, so that the ''do not call'' list can start up as scheduled on October 1, 2003.

TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

Mr. SHELBY. Mr. President, I rise today in support of H.R. 3087, the Surface Transportation Extension Act of 2003. This bill, which was crafted in a bi-partisan, bicameral fashion will extend the Federal transportation programs for an additional 5 months to February 29, 2004.

The Transportation Equity Act for the 21st Century expires on September 30 of this year. Legislation is necessary to carry on the essential functions of the highway, highway safety, motor carrier safety, transit and other programs that are recipients of highway trust fund money. This bill accomplishes just that. It funds the programs at five-twelfths of the fiscal year 2004 budget conference report level.

H.R. 3087 is a clean reauthorization of these programs. This bill contains no new projects and no new programmatic changes. It simply extends TEA–21 and current provisions of transportation law. As the chairman of the Banking Committee whose jurisdiction includes the reauthorization of the transit title of TEA–21, I was hopeful that, working with the chairman of the relevant committee, we would have achieved passage of a multiyear bill. As funding levels and an appropriate source for those funds have yet to be identified, that proved to be impossible.

While I am not overly confident that 5 months of negotiating will resolve this problem, I support this piece of legislation. I believe it is essential that we continue to authorize our Nation's highway and transit infrastructure. I think this necessary stop-gap measure is the way to achieve that. I recommend the bill to my colleagues and ask for their support.